REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ & P, Mwilu; DCJ & VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ)

PETITION (APPLICATION) NO. 19 (E027) OF 2021

–BETWEEN–

THE SENATE ..... 1ST APPLICANT

THE SPEAKER OF SENATE ..... 2ND APPLICANT

SENATE MAJORITY LEADER..... 3RD APPLICANT

SENATE MINORITY LEADER..... 4TH APPLICANT

–AND–

THE SPEAKER OF THE NATIONAL ASSEMBLY..... 1ST RESPONDENT

THE NATIONAL ASSEMBLY..... 2ND RESPONDENT

THE COUNCIL OF COUNTY GOVERNORS..... 3RD RESPONDENT

THE ATTORNEY GENERAL..... 4TH RESPONDENT

KENYA MEDICAL SUPPLIES AUTHORITY..... 5TH RESPONDENT

INSTITUTE FOR SOCIAL ACCOUNTABILITY..... 6TH RESPONDENT

MISSION FOR ESSENTIAL DRUGS AND SUPPLIES..... 7TH RESPONDENT

KATIBA INSTITUTE..... 8TH RESPONDENT

PHARMACEUTICAL SOCIETY OF KENYA..... 9TH RESPONDENT

ELIAS MURUNDU..... 10TH RESPONDENT

THE COMMISSION ON REVENUE AUTHORITY..... 11TH RESPONDENT

(Being an application for review of the Judgment and Orders of the Court (Koome; CJ & P, Mwilu; DCJ & VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ) delivered on 21st March, 2025 in SC Petition No. 19 (E027) of 2021)

Representation:

Mr. Thomas Letangule & Ms. Mercy Thanji for the applicants
(*Letangule & Company Advocates*)

Ms. Jacinta Ahomo h/b for Mr. Paul Muite, SC, Mr. Issa Mansur for the 1st and 2nd respondents
(*Issa & Company Advocates*)

Ms. Komen h/b for Mr. Peter Wanyama for the 3rd respondent
(*Manyonge Wanyama & Associates LLP*)

Emmanuel Bitta for the 4th respondent
(*Attorney General Chambers)*

No appearance for the 6th & 8th respondents
(*Katiba Institute*)

No appearance for the 5th, 7th, 9th, 10 & 11th respondents

RULING OF THE COURT

a) Introduction

[1] The applicants, being the Senate, the Speaker of the Senate, Senate Majority and Minority leaders, filed a Notice of Motion dated 20th June, 2025 pursuant to Sections 3A, 21 and 21A of the Supreme Court, Cap 9B and Rules 3(5) and 28(5) of the Supreme Court Rules, 2020. The application seeks the following orders:

a. *The Court be pleased to order that this Application proceed by way of oral hearing owing to the national importance and implications of the matter and issues raised herein.*

b. *This Court be pleased to review, set aside and/or correct the Judgment, Order and decree of this Court in* ***Supreme Court Petition 19(E027) of 2021; Senate & 3 Others v Speaker of the National Assembly & 10***

Others *(M.K. Koome, P.M. Mwilu, M.K. Ibrahim, S.C. Wanjala, N. Ndungu, I. Lenaola & W. Ouko) delivered on 21st March, 2025.*

c. *The applicants be awarded costs of the Application.*

b) Background

[2] The genesis of the matter is the contention by the applicants that during the 12th Parliament, the National Assembly curtailed the Senate's legislative role in two significant ways. First, it passed several Bills, which were subsequently enacted into law, without the participation of the Senate, contrary to the Constitution. Second, it declined to consider several Bills originating from the Senate, claiming they were money Bills that ought to originate in the National Assembly.

i) Before the High Court

[3] The applicants filed a petition in the High Court where they argued that the National Assembly had consistently and unilaterally passed legislation that both Houses of Parliament should have considered. That the National Assembly was bypassing the concurrence process under Article 110(3) of the Constitution which requires the Speakers of both Houses to jointly determine whether a bill concerns county government. They further urged that despite this Court's advisory opinion in the case of ***Speaker of the Senate & another vs. Attorney-General & another; Law Society of Kenya & 2 others*** (Amicus Curiae) [2013] KESC 7 (KLR) (***the Senate Advisory Opinion***), the National Assembly had continued to act contrary to the said decision as well as the Constitution. They asserted that several Bills were signed into Law by the President despite the absence of a certificate by both Speakers to the effect that the procedure under Articles 109 to 115 of the Constitution had been complied with. To that end, they listed 23 Acts of Parliament that they contended had been passed in contravention of the Constitution. These included: the Public Trustee (Amendment) Act No. 6 of 2018, the Building Surveyors Act No. 19 of 2018, the Computer Misuse and Cybercrime Act No. 5 of 2018, the Statute Law (Miscellaneous Amendment) Act No. 4 of 2018, the Kenya Coast Guard Service Act No. 11 of 2018, the Tax Laws (Amendments) Act

No. 9 of 2018, the Statute Law (Miscellaneous Amendments) Act No. 18 of 2018, the Supplementary Appropriation Act No. 2 of 2018, the Equalization Fund Appropriation Act No. 3 of 2018, the Sacco Societies (Amendment) Act No. 16 of 2018, the Finance Act No. 10 of 2018, the Appropriations Act No. 7 of 2018, the Capital Markets (Amendments) Act No. 15 of 2018, the National Youth Service Act No. 17 of 2018, the Supplementary Appropriation Act No. 13 of 2018, the Health Laws (Amendment) Act No. 5 of 2019, the Sports (Amendment) Act No. 7 of 2019, the National Government Constituency Development Fund Act of 2015, the National Cohesion and Integration (Amendment) Act of 2019, the Statute Law (Miscellaneous Amendment) Act of 2019, the Supplementary Appropriation Act No. 9 of 2019, the Appropriation Act of 2019, and the Insurance (Amendment) Act of 2019. They were also apprehensive that the Parliamentary Service Bill No. 6 of 2018, which was then pending and originated by the National Assembly, would be passed into law without consideration by the Senate.

[4] Further, the applicants contended that the National Assembly unlawfully amended its Standing Orders to bypass the ***Senate Advisory Opinion***. Specifically, they claimed that amendments to Standing Order 121(2) and 143(2) to (6) gave the Speaker sole authority to determine whether a Bill concerns county governments or qualifies as a money Bill, contrary to Articles 110(3) and 114 of the Constitution. In their view, this allowed the National Assembly to unconstitutionally block or delay Senate-originated Bills. This petition was consolidated with one filed by the Council of Governors, who were aggrieved by the Health Laws Amendment Act of 2019, specifically, the amendments to Section 4 of the Kenya Medical Supplies Authority (KEMSA) Act No. 20 of 2013.

[5] The 1st and 2nd respondents filed a replying affidavit in opposition to the consolidated petition where they set out a cross petition within the said replying affidavit. They contended that the Senate's legislative role is limited compared to that of the National Assembly, and that the impugned statutes either did not concern counties or were money Bills, thus not requiring Senate participation. They argued that Article 110(3) applies only when doubt arises as to whether a Bill concerns

counties, and that this had already been settled in the ***Nation Media Group Limited & 6 others vs. Attorney General & 4 others; Consumer Federation of Kenya & 4 others (Interested Parties)*** [2016] KEHC 7689 (KLR) (Nation Media Group Case), rendering the issue *res judicata*. Further, they defended the amendments to National Assembly Standing Orders Nos. 121 and 143 as constitutional under Article 124 and maintained that the ***Senate Advisory Opinion*** was inapplicable due to subsequent procedural changes. Some issues, they claimed, were also *sub judice* due to related pending suits. Additionally, the respondents challenged the Senate's conduct, claiming that it repealed Standing Order No. 35 which conflicted with Article 121 as it made no express mandatory requirement for the ascertainment of quorum before the commencement of any Senate business. They accused the Senate of overstepping its constitutional mandate under Articles 95(5)(b), 108, and 185(3) by: exercising oversight over state organs; creating the offices of leader of majority party and leader of minority party reserved for the National Assembly; and duplicating County Assembly committees to oversee matters within county jurisdiction.

[6] In its Judgment dated 29th October 2020, the High Court (*Ngaah, A. Ndungu & Matheka, JJ.)* held *inter alia* that Article 110(3) of the Constitution requires mandatory concurrence between the Speakers of the National Assembly and the Senate before introducing any Bill concerning counties. Relying on the Supreme Court's ***Senate Advisory Opinion***, it found that the National Assembly's amendments to its Standing Orders 121(2) and 143(2) to (6), which gave unilateral powers to its Speaker, were unconstitutional. The Court declared the 23 statutes passed without Senate involvement to be unconstitutional, along with amendments to the KEMSA Act. It ordered a halt to consideration of any pending Bills lacking evidence of joint concurrence and clarified that all legislation affecting counties or the Senate's mandate must involve the Senate. However, the Court suspended the nullification of the statutes for nine months to allow for regularization in line with Article 110(3), failing which they would stand nullified.

ii) Before the Court of Appeal

[7] Aggrieved, the 1st and 2nd respondents appealed to the Court of Appeal contending that that the High Court erred by, narrowly interpreting Articles 109 to 114 of the Constitution with respect to the legislative mandates of the two Houses of Parliament; misapplying the Supreme Court's decision in the ***Senate Advisory Opinion***; disregarding the principle of *stare decisis* by flouting the correct interpretation of Article 110 (3) of the Constitution as settled by the High Court and Court of Appeal; declaring the impugned statutes unconstitutional; violating the doctrine of separation of powers by ordering the immediate cessation of all legislative business of the House of Parliament and consideration of all Bills that were pending before either House; purporting to reverse decisions of courts of concurrent jurisdiction; failing to properly apply the doctrines of *res judicata* and *sub judice* in so far as the issues raised in the consolidated petition were concerned; and allowing unauthorized person who had not filed a notice of appointment to act for the appellants.

[8] In its Judgment dated 19th November 2021, the Court of Appeal (*Murgor, Nyamweya & Lesiit, JJ.A*) faulted the High Court for overly relying on the ***Senate Advisory Opinion*** instead of independently interpreting Articles 109 to 114 of the Constitution. It clarified that Article 110(3) applies only to Bills concerning county governments, and not all Bills, and that according to Article 109, the Senate's legislative role is limited to bills concerning counties. Secondly, that it excluded the Senate from the law-making process set out in Article 114 as regards money Bills. Additionally, that the role and participation of the Senate in financial legislation is limited to Bills referred to in Chapter Twelve of the Constitution, namely Bills affecting the finances of County Governments.

[9] The Court of Appeal also held that the concurrence process under Article 110(3) refers to Bills concerning County Government as opposed to every Bill, and further that the mediation process under Article 113 does not apply to disputes over concurrence under Article 110(3). Rather, it applies where there is a deadlock in the consideration and passing of Bills concerning County Government by the two Houses.

[10] The Court further found that the High Court should have assessed each impugned statute individually to determine if it concerned county governments, by first; examining the object(s), second, the intent and purpose by applying the pith and substance test and third, to consider the Fourth Schedule to the Constitution so as to determine whether the impugned legislation concerned County Governments. It, however agreed with the High Court and upheld the unconstitutionality of Standing Order No. 121(2) but disagreed with the High Court's rejection of the cross petition, by distinguishing the circumstances of the case from the decision in ***Methodist Church in Kenya vs. Fugicha & 3 others*** [2019] KESC 59 (KLR) (***Fugicha Case***) where it was an interested party who had raised a cross petition in its replying affidavit as opposed to a primary party in the instant matter. The Court further noted that in the instant matter the cross-petition's form met procedural requirements and had not been objected to. Consequently, it remitted prayers (vii) to (xxii) of the cross petition back to the High Court for determination and partially allowed the appeal

[11] The Court of Appeal set aside several High Court orders, including the declaration that 21 Acts passed by the National Assembly were unconstitutional. It held that the concurrence process under Article 110(3) applies only to Bills concerning counties. The Appellate Court upheld the High Court's declaration that three specific Acts were unconstitutional, that is, the Equalisation Fund Appropriation Act No. 3 of 2018, Sacco Societies (Amendment) Act No. 16 of 2018, and parts of the Health Laws (Amendment) Act No. 5 of 2019. It also upheld the High Court's declarations including that; once the Speakers concur a Bill concerns counties, it must follow the bicameral process under Articles 110 to 113, and is not subject to Article 114: Bills or delegated legislation affecting the Parliamentary Service Commission must be considered by the Senate; amendments to Section 4 of the KEMSA Act violated multiple constitutional provisions and were invalid; and National Assembly Standing Order 121(2) was unconstitutional for breaching bicameral legislative procedure. The Court remitted part of a cross-petition to the High Court and ordered that each party bear its own costs.

iii) Before the Supreme Court

[12] The applicants appealed to the Supreme Court contending that the Court of Appeal erred by; failing to adhere to the principle of *stare decisis* contrary to Article 163(7) of the Constitution by not applying the ***Senate Advisory Opinion*** and this Court's decision ***In the matter of Council of Governors & 47 others*** [2020] KESC 65 (KLR) (COG Advisory Opinion); misinterpreting Articles 110(3) and 114 of the Constitution; failing to find that Article 115 of the Constitution imposes an obligation on both Speakers of Parliament, prior to submitting a Bill for assent, to jointly demonstrate compliance with the procedure in Article 110(3) of the Constitution; limiting the Senate's constitutional legislative powers; and arrogating to itself powers to determine which Bills concern County Governments thereby usurping powers constitutionally and jointly reserved for the Speakers of Parliament.

[13] The 6th to 8th respondents filed a cross-appeal where they contend that the Court of Appeal erred by; ignoring the binding precedent of this Court in the ***Fugicha Case***, which barred the inclusion of a cross petition in a replying affidavit; holding that the Senate is excluded from considering money Bills while Article 114 of the Constitution only speaks of introduction of money Bills by the National Assembly; and applying the wrong standard of review as enunciated in the case of ***Selle & another vs. Associated Motor Boat Co. Ltd & others*** [1968] EA 123, which is meant for factual errors, to an appeal requiring constitutional interpretation and application.

[14] In its Judgment of 21st March, 2025, in addition to striking out the 6th and 8th respondent's cross-appeal for not being properly before the Court, the Court affirmed the Court of Appeal's finding that the Senate does not participate in the consideration or enactment of money Bills. It held that Article 114 of the Constitution, which defines and outlines the legislative process for money Bills, removes the power of the Senate to introduce and consider such a Bill. The Court explained that Article 96(2) limits the Senate's role to Bills concerning counties under Articles 109 to 113, with no reference to Article 114. It was the Court's finding

that the exclusion of the Senate from money Bills is a deliberate design aligned with established legislative practices in other asymmetrical bicameral systems, aimed at preventing legislative deadlock and ensuring smooth financial governance.

[15] On the issue of concurrence under Article 110(3), the Court clarified that joint resolution by the Speakers of both Houses is not a blanket requirement for all Bills. Rather, it is only triggered when a question arises as to whether a Bill concerns counties. The Court noted that a purposive reading of Article 110(3) requires transparency and proactive communication between the Speakers to ensure cooperative lawmaking. The Speakers must ensure transparency and clarity at the outset of the legislative process by informing the Speaker of the other House of the introduction of a Bill and the view they have taken as to whether the Bill concerns counties. Particularly, when there is potential for a question arising as contemplated in Article 110(3), even if one has not yet formally arisen. This approach minimizes unnecessary procedural interruptions or the invalidation of the legislative process at a later stage. This Court therefore affirmed the Court of Appeal's clarification that the Speaker of the National Assembly is under an obligation to notify the Speaker of the Senate of the view they take of a Bill as to whether it concerns counties. This notification is to facilitate and enable not only the determination of any question as to the nature of the Bill, but also the concurrence process in the event of a dispute as regards the nature of a Bill.

[16] After careful interrogation of each impugned statute, the Court held that the following 8 statutes were in the nature of money bills and did not require Senate's involvement in their enactment: the Supplementary Appropriations (No. 3) Act of 2018, the Appropriations Act of 2018, the Supplementary Appropriations (No. 2) Act of 2018, the Supplementary Appropriations (No. 13) Act of 2018, the Appropriations Act of 2019, the Supplementary Appropriation (No. 9) Act of 2019, the Tax Laws (Amendments) Act, 2018 (formally National Assembly Bill No. 11 of 2018), and the Finance Act, 2018 (formally National Assembly Bill No. 20 of 2018).

[17] Similarly, the Court further affirmed the finding by the Court of Appeal that the following statutes did not require consideration by the Senate as they did not

concern counties hence were constitutionally enacted: the Public Trustee (Amendment) Act of 2018 (Act No. 6 of 2018; the Capital Markets (Amendment) Act No. 15 of 2018; the Insurance (Amendment) Act, No, 11 of 2019; the National Youth Service Act, No. 17 of 2018; the National Cohesion and Integration (Amendment) Act, 2019; the Kenya Coast Guard Act 2018; the Computer Misuse and Cybercrimes Act, No. 5 of 2018; the Building Surveyors Act No. 19 of 2018; the National Government Constituency Development Fund Act; the Statute Law (Miscellaneous Amendments) Act, 2018 (formally National Assembly No. 44 of 2017); the Statute Law (Miscellaneous Amendments) Act 2018 (No. 18 of 2018); the Statute Law (Miscellaneous Amendments) Act, 2019 (National Assembly No. 21 of 2019); and the Sports (Amendment) Act, 2019.

[18] However, this Court upheld the finding by the Court of Appeal that the Sacco Societies (Amendment) Act, 2018, No. 16 of 2018; and the amendments made to Sections 3 and 4 of the KEMSA Act by the Health Laws (Amendment)Act, No. of 5 of 2019 affected the functions and powers of counties hence ought to have been considered by the Senate hence are unconstitutional. This Court further held that the question of the constitutionality of the Parliamentary Service Act, 2019 was not properly before the Court of Appeal.

[19] Ultimately, this Court upheld the constitutionality of twenty-one (21) Acts passed solely by the National Assembly, finding they did not require Senate involvement under the Constitution and invalidated three for having been enacted without Senate participation.

c) The Application

[20] Back to the present application which is supported by grounds on the face of it as well as a supporting affidavit sworn by Hon. Amason Jeffa Kingi on 20th June, 2025. The applicants also rely on their written submissions dated 23rd June, 2025, further affidavit sworn by Hon. Amason Jeffa Kingi on 24th July, 2025 and further submissions of even date

[21] The 3rd respondent's counsel indicated to the Court that the 3rd respondent supports the application.

[22] It is opposed by the 1st and 2nd Respondents through grounds of objection dated 4th July, 2025, supporting affidavit sworn by Samuel Njoroge on 4th July, 2025 and written submissions of even date. It is also opposed by the 4th respondent through grounds of objection dated 3rd June, 2025 and written submissions dated 8th July, 2025.

d) The Parties' Respective Cases

i. The Applicants' case

[23] The applicants contend that in the Judgment delivered on 21st March, 2025, the Supreme Court interpreted the role of the Senate in the legislative process, specifically on the manner of processing bills in Parliament. They argue that this decision had grave and exceptional implications on devolution and the ability of the Senate to protect the interests of the county governments, requiring the Court's intervention to protect the ends of justice and therefore, this is an appropriate case for the Court to invoke its inherent powers in the interest of justice. They urge that in finding that only bills that concern county governments are subject to the requirements of Article 110(3) of the Constitution, the Court, without explaining any reasons, departed from its previous decisions on this issue in ***Speaker of the Senate & another v Attorney-General & another; Law Society of Kenya & 2 others (Amicus Curiae***) (Advisory Opinion Reference 2 of 2013) [2013] KESC 7 (KLR)***, In the matter of Council of Governors & 47 others*** (Reference 3 of 2019) [2020] KESC 65 (KLR) and ***In the Matter of the Interim Independent Electoral Commission (Applicant)*** (Constitutional Application 2 of 2011) [2011] KESC 1 (KLR. It is also their contention that despite setting out the principles that should apply for the Court to depart from its previous decisions in ***Jasbir Singh Rai & 3 Others v Tarlochan Singh & 5 Others*** (Petition 4 of 2012) [2013] KESC 21 (KLR), the Court failed to follow its own guidelines in the Judgment of 21st March, 2025.

[24] The applicants submit that following the delivery of the Court's Judgment on 21st March, 2025, the Speaker of the National Assembly has embarked on a course of action in which the National Assembly has usurped the constitutional jurisdiction

of the Speaker of the Senate in jointly resolving the question of whether a bill concerns county governments. The applicants cite several examples in support of this contention, first, is the **Gambling Control Bill, 2023**, where the applicants submit that although the National Assembly and the Senate were engaged in mediation pursuant to Article 113 of the Constitution, the National Assembly, emboldened by the judgment of the Court, has since challenged the role of the Senate in its passage, notwithstanding that Part 2, Clause 4(a) of the Fourth Schedule to the Constitution expressly designates "betting, casinos and other forms of gambling" as a function of county governments. The second example cited by the applicants is the **Bicameral Relations Bill**, where it has been contended that the National Assembly rejected the amendments proposed by the Senate. The third example is with respect to the **Health (Amendment) Bill** (Bill No. 56 of 2024), where the applicants urge that the Speaker of the National Assembly unilaterally determined that the Bill concerned county governments without engaging the Speaker of the Senate. The fourth example cited is that on 30th April, 2025, the Speaker of the National Assembly indicated that he would render a ruling on whether the **County Assemblies Pensions Scheme Bill** (Senate Bill No. 14 of 2024), which had been passed by the Senate and transmitted to the National Assembly, qualifies as a money bill, premised on the contention that a money bill cannot originate from the Senate and should therefore only be considered by the National Assembly.

[25] The applicants assert that to avert undesirable outcomes whereby the Senate, having undertaken an extensive legislative process involving public participation and expenditure of public resources, enacts legislation that is later excluded from consideration by the National Assembly, Article 110(3) of the Constitution mandates that the Speakers of both Houses must jointly determine whether a bill concerns county governments before it is considered by the originating House. They argue that in so doing, and during such joint resolution, the Supreme Court in ***Reference No. 2 of 2013*** clarified that the two Speakers are also required to resolve the question of whether a bill qualifies as a money bill. Further that a unilateral

determination by the Speaker of the National Assembly on whether a bill is a money bill is inconsistent with the principles of cooperative governance and public participation enshrined in Articles 10 and 259 of the Constitution.

[26] The applicants urge that in their petition before the Supreme Court they sought the Court's interpretation of Article 110(3) of the Constitution on the joint resolution of the nature of bills and in proceeding to pronounce themselves on whether the Senate should consider money bills, the Court omitted the issue on who and at what juncture the determination as to whether the bill is a money bill is made. Further, that in failing to render its determination the Court departed from its findings in ***Bia Tosha Distributors Limited v Kenya Breweries Limited & 6 others*** (Petition 15 of 2020) [2023] KESC 14 (KLR) as the inclusion of the Senate in the consideration of money bills was not the issue in the Senate's petition to the Court. It is submitted that the Court's decision of 21st March, 2025 is not clear on what notification between the two Speakers entails and what options are available to the Speaker of Senate once they are notified by the Speaker of the National Assembly, and in the event, they disagree there is no mechanism to determine the next step as to the fate of a bill. Further, the applicants are apprehensive that the National Assembly may proceed with the passage of a bill despite the Senate's protests, and this process may be challenged in court, leading to endless litigation against bills and acts of parliament, which is against public interest. To the applicants, public interest lies in protecting devolution and devolved governments. Therefore, the National Assembly's continued enactment of legislation without complying with Article 110(3) of the Constitution denies the Senate the opportunity to represent the counties and to protect the interests of counties and their governments as required by Article 96 of the Constitution.

[27] It is the applicants' submission that in their petition before the Court, they sought the interpretation of Article 110(3) of the Constitution concerning the joint resolution on the nature of bills. They argue that in pronouncing itself on the question of whether the Senate should consider money bills, the Court failed to address the distinct issue of who has the authority to determine whether a bill is a

money bill and at what juncture such a determination is to be made. Further, that in omitting to render itself on this issue, the Court departed from its reasoning in ***Bia Tosha Distributors Limited v Kenya Breweries Limited & 6 others*** (Petition 15 of 2020) [2023] KESC 14 (KLR), since the inclusion of the Senate in the consideration of money bills was not the matter that was placed before the Court in the Senate's petition. They contend that the decision of 21st March, 2025, does not clarify what constitutes proper notification between the two Speakers, nor what options are available to the Speaker of the Senate upon such notification by the Speaker of the National Assembly. Also, that in the event of a disagreement between the two Speakers, the judgment fails to establish a mechanism to determine the next course of action or the fate of the impugned bill.

[28] The applicants are apprehensive that, in the absence of clarity, the National Assembly may proceed with the legislative process despite the objections of the Senate, thereby giving rise to potential legal challenges and prolonged litigation over the passage of bills and acts of Parliament, which would undermine the public interest. The applicants reiterate that public interest is best served by safeguarding devolution and the integrity of county governments and that the continued enactment of legislation by the National Assembly without compliance with Article 110(3) of the Constitution effectively denies the Senate its constitutional mandate to represent the counties and protect their interests as envisaged under Article 96 of the Constitution.

ii) The 1st and 2nd respondents' case

[29] The 1st and 2nd respondents submit that the appeal was heard and determined on merits, and therefore the instant application is an appeal camouflaged as an application for review. They submit that once a Court has issued a final Judgment and proceedings have been concluded, the court becomes *functus officio*. They contend that the instant application and the factual issues raised therein fail to meet the threshold for review under Section 21A of the Supreme Court Act to warrant this Court's intervention. Citing the case of ***Sonko v Clerk, County Assembly of Nairobi City & 11 others*** (Petition (Application) 11 (E008) of 2022) [2024] KESC

43 (KLR), the respondents argue that the application has failed to demonstrate how the impugned Judgment was obtained by fraud or deceit, how the decision was a nullity, how the Court was misled into giving its judgment under a mistaken belief that parties had consented or if the decision is based on a repealed provision of the law or as a result of deliberate concealment of a statutory provision.

[30] Further, that Rule 28(5) of the Supreme Court Rules embodies the *slip rule* which is not intended to afford a party the opportunity to relitigate or reopen a matter merely because a party is unhappy with the outcome. The 1st and 2nd respondents point out that the annexures attached to the application are new and constitute additional evidence that was never part of the record considered by the chain of courts below. Therefore, the new and additional evidence is inadmissible and should be disregarded by the Court.

[31] They urge that contrary to the assertions by the applicants, the Court did not depart from its previous decisions in ***Speaker of the Senate & another v Attorney-General & another; Law Society of Kenya & 2 others (Amicus Curiae) (supra), In the matter of Council of Governors & 47 others (supra)*** and ***In the Matter of the Interim Independent Electoral Commission (Applicant) (supra).*** Rather, these decisions were cited and relied on by the applicants during the hearing, they were duly considered by the Court, and the Court did not depart from them but instead followed and clarified them in its judgment.

[32] It is the 1st and 2nd respondents contention that the applicants, in the instant application, have challenged the ongoing legislative process regarding several bills including the **County Assemblies Pensions Scheme** Bill (Senate Bill No. 14 of 2024), the **Houses of Parliament (Bicameral Relations) Bill** (National Assembly Bill No. 44 of 2023), the **Gambling Control Bill** (National Assembly Bill No. 70 of 2023) and the **Health (Amendment) Bill** (National Assembly Bill No. 56 of 2024. They submit that the constitutionality of the said bills was neither considered by the chain of courts below nor by this Court in its impugned Judgment. Consequently, that this Court therefore lacks original or inherent jurisdiction to

determine the issues raised thereon which are new, in an application for review or otherwise. They also argue that these bills and many others are at various stages of the legislative process in accordance with the Constitution and the Standing Orders of the Houses of Parliament and further that this legislative process and procedures should be allowed to run their course under the ordinary safeguards of separation of powers. They therefore urge that the application be dismissed with costs.

iii) The 4th Respondent's case

[33] The 4th respondent joins issue with the 1st and 2nd respondents and seeks dismissal of the application with costs.

iv) The applicants' rejoinder

[34] In rejoinder, the applicants reiterate their earlier submissions and further contend that they have not introduced any additional evidence in the application. They contend that the matters referred to in the application are a direct result of the Judgment dated 21st March, 2025 and the confusion created from the conflicting decisions of the Court. They submit that the interpretation of Articles 109, 110, 113 and 114 of the Constitution and the ensuing confusion on the interpretation of the Supreme Court is meritorious, exceptional and in public interest and therefore qualifies for review under Sections 3A, 21 and 21A of the Supreme Court Act and Rule 28(5) of the Supreme Court Rules.

[35] In addition, they argue that they will be greatly prejudiced if the said orders are not reviewed, varied or set aside given that the failure to deliberate on bills that may concern counties will violate Article 96 of the Constitution, negatively impacting the interests of the county governments and threatening devolution which is a key pillar of the national values and principles of governance under Article 10 of the Constitution. It is also their contention that the issues raised in the application are so grave and exceptional that the Court's intervention is necessary to protect the ends of justice and therefore an appropriate case for the Court to invoke its inherent powers in the interest of justice.

e. Analysis and Determination

[36] Having considered the totality of the applications, the responses and submissions put forth, we find that the applicants have not demonstrated any special and compelling circumstances to warrant the prayer seeking for an oral hearing of the instant application, in exception to the provisions of rule 31(1) of the Supreme Court Rules, 2020, which require that applications before this Court shall be determined by way of written submissions. This being an application seeking review of the Court's judgment. Beyond that, it is our considered view that only one issue emerges for our consideration:

a) ***Whether the applicants have established a basis for the review of this Court's decision.***

[37] The principles that guide this Court in determining applications for review are now an old hat, but bear repeating nonetheless. This Court has neither jurisdiction to sit on appeal nor to review its decisions other than in the manner provided for in the Rules of the Court and explained in ***Fredrick Otieno Outa v Jared Odoyo Okello & 3 others*** (Petition 6 of 2014) [2017] KESC 25 (KLR) ('the ***Outa case***) and which is now codified under section 21A of the Supreme Court Act and rule 28(5) of the Supreme Court Rules:

> *"21A.The Supreme Court may review its own decision, either on its own motion, or upon application by a party in any of the following circumstances—*
>
> *a. where the judgment, ruling or order was obtained through fraud, deceit or misrepresentation of facts;*
>
> *b. where the judgment, ruling or order is a nullity by virtue of being made by a court which was not competent;*
>
> *c. where the court was misled into giving a judgment, ruling or order under the belief that the parties have consented; or*

d. where the judgment, ruling or order was rendered on the basis of repealed law, or as a result of a deliberate concealment of a statutory provision."

[38] We have unambiguously held before that an application for review is not meant to afford the losing party an opportunity to re-litigate or re-open a matter merely because such party is unhappy with the outcome. It is also not within the remit of this Court to offer an interpretation of its judgment to the parties. Once the Court has heard and determined an appeal from the Court of Appeal, it becomes *functus officio*. The Judgment stands until such time, if at all, that it is departed from in a future case or, reviewed, within the confines that we have clearly outlined. See ***Sonko v Clerk, County Assembly of Nairobi City & 11 others*** (Petition (Application) 11 (E008) of 2022) [2024] KESC 43 (KLR), ***Kaluma v NGO Co-ordination Board & 5 others*** (Application E011 of 2023) [2023] KESC 72 (KLR); ***Methodist Church in Kenya v Fugicha & 3 others*** *(*Petition 16 of 2016) [2019] KESC 59 (KLR) and ***Parliamentary Service Commission v Wambora & 36 others*** (Application 8 of 2017) [2018] KESC 74 (KLR).

[39] The applicants have not demonstrated how their matter conforms to the specific parameters enumerated under section 21A of the Supreme Court or in the ***Outa case***. They have failed to demonstrate to our satisfaction that the impugned Judgment was obtained by fraud or deceit, is a nullity, or that the court was misled into giving its judgment under a mistaken belief that the parties had consented thereto. Taking into account the totality of the applicants' motion, we are convinced that the application is a disguised appeal from this Court's judgment, an attempt to relitigate issues already conclusively determined by this Court and to argue fresh claims in an application for review. The motion does not fall within the confines of the parameters prescribed for review by statute and applicable case law.

[40] We find no reason to review the Judgment in any way, as the criteria established for such a review have not been satisfied by the applicants.

[41] Regarding costs, guided by our decision in ***Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others,*** (Petition 4 of 2012) [2014] KESC 31 (KLR),

and further considering that in the Judgment delivered on 21st March, 2025, the Court recognized that the matter raised issues of public interest, we find it appropriate that each party shall bear their own costs.

f. Orders

[42] Consequently, and for the reasons aforestated, we make the following Orders:

i. ***The Applicants' Notice of Motion dated 20th June, 2025 and filed before this Court on 24th June, 2025 be and is hereby dismissed.***
ii. ***Each party will bear their own costs of the application.***

It is so ordered

DATED and **DELIVERED** at **NAIROBI** this **15th** day of **August, 2025.**

.....

M. K. KOOME
CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT

.....	.....
P.M. MWILU **DEPUTY CHIEF JUSTICE &** **VICE PRESIDENT OF THE** **SUPREME COURT**	**M.K. IBRAHIM** **JUSTICE OF THE SUPREME COURT**
.....	.....
S. C. WANJALA **JUSTICE OF THE SUPREME COURT**	**NJOKI NDUNGU** **JUSTICE OF THE SUPREME COURT**
.....	.....
I. LENAOLA **JUSTICE OF THE SUPREME COURT**	**W. OUKO** **JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original

REGISTRAR
SUPREME COURT OF KENYA